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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/032,765	10/29/2001	Darrel Drinan	05693.0002.NPUS01	5762
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27194 7590 03/06/2003

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EXAMINER

MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,765

Applicant(s)

DRINAN ET AL.

Examiner

David J. McCrosky

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-73 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The joint inventors executed separate oaths without making reference to the fact that the affiant is a joint inventor together with each of the other inventors. See MPEP § 602 under Statutory Declarations.

The provisional application number is misprinted on the declaration.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-16, 20, 21, 24-28, 57-64 and 69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 13-15, 20, 21, 24 and 28, it is unclear how the recited structural features further limit the method claim.

Claim 26 recites the limitation "the evaluation" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "the evaluation" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 57 recites the limitation "the sensor assembly" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the display device" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-17, 20-27, 29-40, 42-54, 56, 65 and 67-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobsen et al. The reference discloses a remote monitoring system and method. Sensor unit (14), which is attached to the body, transmits data to a wrist unit (18), soldier unit (50), leader/medic unit (320) or a command unit (400). Data is transferred/relayed as illustrated in Figures 7 and 7A. See also col. 15, l. 54 to col. 16, l. 4. Applicant has not defined "summarizing". Examiner considers any data presented to a user in a format other than binary code from the sensor as "summarized". Alarms and instructions may be transmitted to the soldier. See col. 11, ll. 41-50. Means for operating a pump or respirator are provided. See col. 9, ll. 42-49 and col. 10, ll. 15-44. Storage means are provided in the leader/medic unit,

which collects information from a plurality of soldier units including the leader/medic's.

See col. 12, ll. 24-33.

Claims 1-3, 6, 7, 10-13, 15, 18, 19, 21-24, 28-30, 33-36, 41-44, 50, 51, 56, 65 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by Flach et al (cited by Applicant). The reference discloses sensors attached to telemeters (102A, 102B), which communicate with more than one VCELL. The VCELLs transmit data to a plurality of monitoring stations. See abstract and col. 6, ll. 24-55. The monitoring station sends control information to the telemeters. See col. 8, ll. 2-5 and col. 19, ll. 4-18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14, 55 and 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen et al as applied to claims 1 and 50 above, and further in view of Gowda et al. Jacobsen et al teach a monitoring system and method as recited for claims 1 and 50. While disclosing non-invasive sensors, Jacobsen et al do not teach an implantable sensor interface for an invasive sensor. Gowda et al discloses an implantable sensor comprising an external ring, transdermal conduit and a biofluid access port. See abstract. The access port contains a hydrogel filter. See col. 5. A covering encourages cell infiltration. See col. 4, ll. 37-47. Silver prevents bacterial accumulation. See col. 6, ll. 31-36. Gowda et al further teach an external analyte measurement device used in conjunction with the interface. See col. 8, ll. 56-63. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and method of Jacobsen et al with an implantable interface, as taught by Gowda et al to provide a more accurate measurement than that provided by a non-invasive sensor.

Claims 14, 55 and 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flach et al as applied to claims 1 and 50 above, and further in view of Gowda et al. Flach et al teach a monitoring system and method as recited for claims 1 and 50. While disclosing non-invasive sensors, Flach et al do not teach an implantable sensor interface for an invasive sensor. Gowda et al discloses an implantable sensor comprising an external ring, transdermal conduit and a biofluid access port. See abstract. The access port contains a hydrogel filter. See col. 5. A covering encourages cell infiltration. See col. 4, ll. 37-47. Silver prevents bacterial accumulation. See col. 6,

Art Unit: 3736

II. 31-36. Gowda et al further teach an external analyte measurement device used in conjunction with the interface. See col. 8, II. 56-63. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and method of Flach et al with an implantable interface, as taught by Gowda et al to provide a more accurate measurement than that provided by a non-invasive sensor.

Claims 72 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flach et al as applied to claim 50 above. Flach et al teach the claimed invention except for use on a laboratory animal. It would have been an obvious matter of design choice to modify Flach et al by using the system on animals since Applicant has not disclosed that using the system on animals solves any stated problem or is for any particular purpose and it appears that the system would perform equally well with any mammal.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

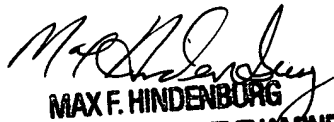
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric F. Winakur can be reached on 703-308-3940. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Art Unit: 3736

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DJM

March 4, 2003


MAX F. HINDENBURG
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